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AT&T MOBILITY LLC and AT&T MOBILITY II LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ENOVSYs LLC,

Plaintiff,

vs.

AT&T MOBILITY LLC and AT&T
MOBILITY II LLC,

Defendants.

AT&T MOBILITY LLC and AT&T
MOBILITY II LLC,

Counterclaimants,

vs.

ENOVSYs LLC,

Counterdefendant.

Case No.: 2:11-CV-05210-FMO(AGR_x)

**DEFENDANTS' NOTICE OF
MOTION AND MOTION IN LIMINE
NO. 3 TO EXCLUDE OVERBROAD
FINANCIAL INFORMATION**

Hearing Date: March 21, 2014
Hearing Time: 10:00 AM

Honorable Judge Fernando M. Olguin

Trial Date: April 8, 2014

1 **PLEASE TAKE NOTICE THAT** Defendants AT&T Mobility LLC and
2 AT&T Mobility II LLC (“AT&T”) move in limine to prevent Enovsys from
3 referencing or introducing evidence of irrelevant and overbroad financial
4 information about AT&T.

5 Subject to the Court’s availability, the motions will be heard on March 21,
6 2014, at 10:00 am, before the Honorable Judge Fernando M. Olguin. Defendants
7 base their motion on the memorandum of points and authorities set forth below,
8 any subsequently filed supplemental briefing and accompanying papers, the
9 pleadings and papers filed in this action, and any other arguments, evidence, and
10 matters submitted to the Court, at the hearing or otherwise.

MEMORANDUM OF POINT AND AUTHORITIES

I. INTRODUCTION

AT&T Mobility and AT&T Mobility II (“AT&T”) move in limine to exclude irrelevant information regarding their financial status from evidence at trial. The categories of evidence listed below are irrelevant to the issues before the jury and would result in substantial prejudice to AT&T if they are introduced. Thus, AT&T requests an in limine ruling that they be excluded.

II. ANALYSIS

AT&T seeks an order from the Court excluding evidence of or reference to the following financial information:

1. AT&T’s net worth;
2. AT&T’s net or gross profits or revenue for providing wireless, wireline, and internet data services, including foreign revenue;
3. AT&T’s net or gross profits or revenue derived from handset sales;
4. AT&T’s net or gross profits or revenues from wireless data services; and
5. AT&T’s net or gross profits or revenue from any product or service not discussed in Enovsys’s technical expert reports.

The first three categories of financial information (AT&T’s net worth, overall service revenue, and revenue from handset sales) have no relevance to this matter whatsoever and should be excluded. *See* Fed R. Evid. 402; *Wrather v. Farnam Companies, Inc.*, No SACV 03-967 JVS (RCx), 2003 WL 25667639 at *1 (C.D. Cal. Nov. 3, 2003) (granting motion in limine to exclude evidence of wealth and holdings unrelated to the asserted claims citing irrelevance). Enovsys does not use any of these categories of information in calculating its requested damages in this case and thus they have no relevance to Enovsys’s requested royalty.

1 Even if the above-mentioned classes of financial information were to be
2 deemed relevant in some way, such evidence would result in undue prejudice by
3 confusing of the issues and misleading of the jury. *See* Fed. R. Evid. 403.
4 Permitting evidence and testimony regarding overbroad financial information
5 about AT&T will likely induce the jury to draw impermissible prejudicial
6 conclusions regarding AT&T's being a large company that can easily afford to (or,
7 worse, should be made to) pay large sums to a small plaintiff. *See Wrather*, 2003
8 WL 25667639 at *1 ("Justice should be the same for the rich and the poor."). In
9 *Uniloc U.S.A., Inc. v. Microsoft Corp.*, the Federal Circuit acknowledged the
10 unique prejudice large corporations face as defendants in patent infringement suits
11 and restricted admissibility to revenue related to the accused products. *See* 632
12 F.3d 1292, 1312 (Fed. Cir. 2011). Courts in this Circuit have followed the Federal
13 Circuit's mandate and excluded the overbroad financial information in patent
14 infringement suits citing undue prejudice to the defendant corporation. *See, e.g.,*
15 *HTC Corp. v. Tech. Properties Ltd.*, No. 5:08-CV-00882-PSG, 2013 WL 478259
16 at *6 (N.D. Cal. Sept. 6, 2013) ("[T]he probative value of evidence related to
17 HTC's size, wealth or overall revenues is substantially outweighed by the risk of
18 unfair prejudice, confusion of the issues and misleading the jury necessitating
19 exclusion under Rule 403."). Accordingly, AT&T respectfully requests that the
20 Court exclude any reference to: (1) AT&T's net worth; (2) AT&T's net or gross
21 profits or revenue for providing wireless, wireline and internet data services,
22 including foreign revenue; and (3) AT&T's net or gross profits or revenue derived
23 from handset sales.

24 With respect to the last two categories of evidence (AT&T's data revenue
25 and revenues for LBS products not identified in expert reports), those should be
26 excluded as well because they are irrelevant. AT&T's *Daubert* motion to exclude
27 the opinions Enovsys's damages expert Dr. Parr explains how these categories
28 cannot be used to calculate damages in this case. For example, Dr. Parr seeks to

1 capture a percentage of the entire market value of AT&T's wireless data revenue,
2 yet he makes no attempt to show that the Accused Patents drive demand for that
3 revenue. Defendants' Motion to Exclude the Opinions of Russell Parr ("Parr
4 Daubert") (filed concurrently with this motion) at 5-6. Likewise, Dr. Parr seeks to
5 recover damages for products that Enovsys has not identified as infringing in its
6 expert reports. As explained in AT&T's *Daubert* motion, Dr. Parr's opinions on
7 unidentified products must be excluded, and so must the underlying facts for those
8 opinions because they have no relevance to any issues the jury must decide. Parr
9 Daubert at 12-13. In particular, Dr. Parr attempts to collect a royalty on revenue
10 derived from the sale of certain location-based services applications despite a lack
11 of any explanation from Enovsys's technical experts as to whether or how these
12 applications infringe. *Id.*

13 Should Enovsys be allowed unfairly to prejudice the jury with large revenue
14 numbers associated with AT&T's data revenue and products that are not accused
15 of infringing, the jury will likely use this irrelevant information to award excessive
16 and unsupported damages. Rule 403 requires the exclusion of such irrelevant and
17 unfairly prejudicial information.

18 **III. CONCLUSION**

19 In light of the foregoing, AT&T respectfully requests that the Court grant its
20 order excluding evidence of or reference to the aforementioned categories of
21 overbroad financial information.
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1 Dated: February 28, 2014

Respectfully submitted,

2 BAKER BOTTS L.L.P.

3
4 /s/ Eliot D. Williams

5 Eliot D. Williams

6
7 Attorney for Defendants and
Counterclaimants

8 AT&T MOBILITY LLC and AT&T
9 MOBILITY II LLC